

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

OP.No. 15716 of 2000(U)

PETITIONERS:

1. K.V. MOHANAN,
SUB ENGINEER,
KERALA STATE ELECTRICITY BOARD,
(ELECTRICAL SECTION),
PADIOTCHAL.P.O., PADIOTCHAL,
VIA. PAYYANNUR, DIST. KANNUR.
2. C. HARIDAS,
SUB ENGINEER,
KERALA STATE ELECTRICITY BOARD,
(ELECTRICAL SECTION),
MATHAMANGALAM, DIST. KANNUR.
3. K.V. SHAMBU NAMBOODIRI,
SUB ENGINEER,
KERALA STATE ELECTRICITY BOARD,
EZHIMALA, EZHIMALA SUB STATION,
P.O. ETTIKULAM, DIST. KANNUR.

**BY SRI.SURESH SUKUMAR,
SMT.VIDHYA. A.C.**

RESPONDENTS:

1. THE CHAIRMAN, KERALA STATE ELECTRICITY BOARD,
VIDYUDHI BHAVAN, THIRUVANANTHAPURAM.
2. THE CHIEF ENGINEER (ELECTRICAL SECTION),
K.S.E.B., THIRUVANANTHAPURAM.
3. THE DEPUTY CHIEF ENGINEER (ELECTRICAL SECTION),
K.S.E.B., KANNUR - 6.

O.P. NO. 15716/2000:

4. THE LEGAL ADVISOR AND DISCIPLINARY ENQUIRY OFFICER,
K.S.E.B., TRIVANDRUM.

BY ADV.SRI.C.K.KARUNAKARAN, SC FOR KSEB.

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 25/06/2007,THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

ORDER ON C.M.P. NO. 25616/2000 IN O.P. NO. 15716/2000

DISMISSED

25/06/2007.

SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE CHARGE SHEET ISSUED TO THE P.1. EF. NO. EB/DA/SS-PYNR/92-93/2295 DTD. 23/02/93.

EXT.P.2: COPY OF THE REPLY DTD. 30/03/93 SUBMITTED BY THE P.1. TO THE R.3.

EXT.P.3: COPY OF THE MEMO OF CHARGES ISSUED TO THE P.2. REF. NO. EB2/DA/SS-PYNR/92-93/2293 DTD. 23/03/93.

EXT.P.4: COPY OF THE REPLY DTD. 14/03/93 SUBMITTED BY THE P.2. TO THE R.3.

EXT.P.5: COPY OF THE MEMO OF CHARGES ISSUED TO THE P.3. REF. NO. EB2/DA/SS-PYNR/92-93/2292 DTD. 23/02/93.

EXT.P.6: COPY OF THE NOTICE NO. LA&DEO 10/94 DTD. 26/02/96 ISSUED BY THE R.4.

EXT.P.7: COPY OF THE JUDGMENT OF SPECIAL JUDGE (VIGILANCE) KOZHIKODE DTD. 28/09/98 IN C.C. 1/96.

EXT.P.8: COPY OF THE REPRESENTATION DTD. 23/02/99 SUBMITTED BY THE P.1. TO THE R.1.

EXT.P.9: COPY OF THE REPRESENTATION DTD. 06/03/99 SUBMITTED BY THE P.2. TO THE R.1.

EXT.P.10: COPY OF THE REPRESENTATION OF P.3.

EXT.P.11: COPY OF THE NOTICE DTD. 21/05/99 ISSUED BY THE R.4.

O.P. NO. 15716/2000:

EXT.P.12: COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN O.P. 13906/99.

**EXT.P.13: COPY OF THE LETTER NO. VIG. BIV.1632/92 DTD. 13/04/2000 OF INSPECTOR
GENERAL OF POLICE (VIGILANCE & SECURITY) K.S.E.B.**

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

THOTTATHIL B. RADHAKRISHNAN, J.

= = = = =

O.P.No.15716 of 2000-U

= = = = =

Dated this the 25th day of June, 2007.

JUDGMENT

The petitioners faced disciplinary proceedings on account of alleged involvement in aiding some of the consumers of the Electricity Board to tamper and extract energy and falsification. The petitioners also faced proceedings before the criminal Court for offences punishable under the Indian Penal Code, as also the Prevention of Corruption Act on the same allegations. The criminal Court came to the conclusion that the offences punishable under the P.C.Act and I.P.C. have not been established. Accordingly, the petitioners were acquitted.

2. This Court directed the Board to consider whether the proceedings against the petitioners should continue on the administrative side. By proceedings, which are essentially cryptic, the Vigilance Officer of the Board, in the impugned

order, states that the Chairman has ordered that the disciplinary proceedings shall continue. Obviously, that consideration and decision do not reflect fair application of mind either on the facts and circumstances of the case or on the relevant issues arising for decision.

3. In **G.M.Tank v. State of Gujarat** [(2006) 5 SCC 446], the Apex Court laid down that even if it is not within the realm of this Court to step in during the course of disciplinary proceedings in cases where officials are charged under the P.C. Act and I.P.C. offences referable to the same incident, there is no reason why the verdict of the criminal court is not given due weightage.

4. It is not as if the doctrine of res judicata is alien to criminal jurisprudence. In fact, in **Manipur Administration v. Bira Singh** (AIR 1965 SC 87), the Constitution Bench of the Apex Court laid down that the rule of issue estoppel in a criminal trial is that where an issue of fact has been tried by a competent court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel

or res judicata against the prosecution, not as a bar to the trial and conviction of the accused for a different or distinct offence, but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by the terms of Section 403(2) of the Code of Criminal Procedure, 1898, as it then stood. The said rule is not the same as the plea of double jeopardy or autrefois acquit. The rule does not introduce any variation in the Code of Criminal Procedure either in investigation, enquiry or trial.

5. In G.M.Tank (supra), the Apex Court was dealing with a case where the departmental proceedings and the criminal case were based on identical and similar set of facts and the charge in the departmental case against the charge-sheeted officer and the charge before the criminal court were one and the same. It was held that when facts and evidence in the departmental as well as the criminal proceedings were the same, the distinction between the departmental and criminal proceedings on the basis of approach and burden of proof need not be applied and the judicial pronouncements which are made

after a regular trial should be given due weightage and it would be unjust and unfair and rather oppressive to ignore the contents of the judicial pronouncements. May be that, while applying G.M.Tank (supra) to the facts of the case in hand, a clear distinction has to be necessarily maintained in as much as in G.M.Tank, the disciplinary proceedings and judicial proceedings had culminated in final orders whereas in the case in hand, the disciplinary proceedings have not culminated. But, having perused the materials, including Ext.P7, it is not as if the disciplinary proceedings should necessarily proceed unless the administration comes to the view that there would be different materials further to those available in the judicial proceedings.

6. For the aforesaid reasons, the view taken and stated by the Board in Ext.P13 is set aside and it is directed that the competent among the respondents will take up the matter and decide de novo as to whether the disciplinary proceedings against the petitioner should continue in the light of what is stated above and having regard to the contents of Ext.P7 judgment.

OP15716/2000

-: 5 :-

The writ petition is allowed to the limited extent as above.

No costs.

Sd/-

**THOTTATHIL B. RADHAKRISHNAN,
JUDGE.**

Sha/-

OP15716/2000

-: 6 :-

THOTTATHIL B. RADHAKRISHNAN, J.

= = = = =

O.P.No. 15716 of 2000-U

= = = = =

JUDGMENT

Dated: 25th June, 2007.